



**ARK
RESTAURANTS
CORP.**

2019 ANNUAL REPORT

The Company

We are a New York corporation formed in 1983. As of the fiscal year ended September 28, 2019, we owned and/or operated 20 restaurants and bars, 17 fast food concepts and catering operations through our subsidiaries. Initially our facilities were located only in New York City. As of the fiscal year ended September 28, 2019, 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, three are located on the east coast of Florida and two are located on the gulf coast of Alabama.

In addition to the shift from a Manhattan-based operation to a multi-city operation, the nature of the facilities operated by us has shifted from smaller, neighborhood restaurants to larger, destination properties intended to benefit from high patron traffic attributable to the uniqueness of the location and catered events. Most of our properties which have been opened in recent years are of the latter description. As of the fiscal year ended September 28, 2019, 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); *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); two *Original Oyster Houses*, one in Gulf Shores, Alabama and one in Spanish Fort, Alabama (2017) and *JB's on the Beach* in Deerfield Beach, Florida (2019).

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 28, 2019, including financial statements, exhibits and schedules thereto, to each of our shareholders of record on February 12, 2020 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 12, 2020

Shareholders, Employees and Friends of the Company,

EBITDA from restaurant operations, as adjusted¹, our preferred measure of performance, increased 26.8% this year to \$12,341,000. While this was better on a year over year basis, the performance of the assets in our portfolio at the beginning of the past fiscal year fell short of expectations. We believe this "gap" between actual and expectations will close favorably in the year ahead and with adjustments to our portfolio during this past year, already in place, we expect further improvements in EBITDA from restaurant operations, as adjusted.

Our biggest disappointment continues to be Sequoia in Washington D.C. While we reestablished profitability with increased revenue, we are still not achieving a worthwhile result given the substantial reinvestment of capital made in fiscal 2017 and the excellence of management in place. Private events, critical to the success at Sequoia, are beginning to gain some traction. Operating profits will continue to improve contributing to the narrowing of the fiscal 2019 "gap". The question for us is the velocity of improvement.

We operate food courts at the Tampa and Hollywood Florida Hard Rock Hotels. Hard Rock refurbished its Tampa property and expanded the Hollywood property in 2019. At the Tampa property, we were closed from June 2 to September 28 when the refurbishment moved into our location. The capital expense of the public area where we have communal seating was paid for by Hard Rock. We expended capital to replace back of the house equipment that was past its useful life. During this time, we opted to continue to pay employees. There exists a shortage in the labor market and our preference was to not risk the market when we had well-trained and loyal workers in place. For the period we were closed, we had losses which contributed to the aforementioned "gap". The good news is that we rethought our menus and pricing and we are experiencing improved revenue and operating profits since reopening. Hollywood was a different situation than Tampa. As part of the expansion, Hard Rock had the contractual right to move the location of our operation. We never closed during construction and operating profits were unaffected. The day our new location was ready we moved from our old location. Hard Rock paid all costs of construction of this new space. We believe there is good news here as well. First, the expanded Hard Rock is by virtue of design and amenities drawing significant head counts. Second, we decided to take an aggressive approach with our menus that is best described as providing upscale restaurant quality food in a fast casual setting. This combined with the substantial increased population has essentially doubled revenues. This is another reason we expect improved EBITDA from restaurant operations, as adjusted, in fiscal 2020.

This past May we acquired the operation of JB's on the Beach in Deerfield Beach, Florida. Beautifully situated within this beach community, JB's is an institution in south Florida. Our lease is for 25 years (which includes a five year option). Also we have a right of first refusal if the property is sold. We are not optimistic about our chances of acquiring the property but our lease is favorable and as with our other recent acquisitions, we are benefitted with an experienced management team. This acquisition was completed during their slow season and we did not have very much in the way of cash flow from this property during fiscal 2019. We expect strong cash flow in the first and second quarter of fiscal 2020 which is the busy season when revenues expand. This is another reason for our optimism going forward.

Our revenue at our two Alabama locations improved and operating expenses have benefitted from restructuring back office operations during this past second quarter. Our Rustic Inn and Shuckers properties in South Florida continue

¹ EBITDA from restaurant operations, as adjusted represents earnings before interest, taxes, depreciation and amortization as adjusted for non-controlling interests, non-cash stock option expense, losses on the closure of Durgin-Park and an impairment loss from the write-down of long-lived asset.

to perform well with increased revenues and cash flow. Las Vegas continues to be solid although this year we will have legislated increases to payroll. It is questionable if we have the price elasticity in this market to recover these payroll increases. We do not believe this to be the case in New York. Overcoming some hesitance, we recently put in place some menu price increases at Bryant Park which for the moment has not faced customer opposition. If this holds true, we expect that operating profits should improve (as long as weather does not interfere). Robert in New York remains solid. El Rio Grande underperformed when the building where it is located put up construction bridges for necessitated repairs. This construction obscured visibility to the restaurant and essentially closed a portion of our outdoor seating during the normally busy spring to fall season. This construction ended this past December so we expect this property to have an improved year over year result. Clyde's continues to challenge us as profits remain elusive despite a best effort. We have short term leases in Atlantic City and at Thunder Grill in Washington D.C. These operations which do not have significant cash flow will continue to operate during fiscal 2020. Finally, in January 2019, we closed Durgin-Park in Boston. We had no answer to deteriorating sales and mounting losses.

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 third quarter of the fiscal year 2018. The dollar volume of betting we are servicing has far exceeded the volume of other sports betting operations in the state. This we believe bodes well for the future of The Meadowlands Racetrack in obtaining a casino license if New Jersey determines it needs to offset the diminution of tax revenue from Atlantic City by allowing a casino in the northern part of the state. If the LLC is successful in obtaining a casino license, we retain an exclusive to all casino food and beverage operations with the exception of a carve out for a Hard Rock Café (Hard Rock is a partner in the LLC). To date, the economics of the above have been negligible as our interest in the LLC is accounted for at cost and we will only recognize income when cash distributions are received. There have been none to date and we do not expect distributions for the foreseeable future as management is using the cash flow from the sports betting operations to improve its balance sheet.

We will pursue additional opportunities to acquire restaurants where the real estate is attached to 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 expect to do outsized volumes. One of our challenges as 2020 moves forward is containing inflationary operating expenses. This is most obvious with healthcare, property and liability insurance premium expenses. We continually research opportunities to lower all operating expenses at the restaurants and corporate. Despite our small success at raising some prices at Bryant Park and at the Hard Rock locations, raising prices is not a comfortable alternative to the continued effort put forward in reducing operating costs. We have proved adept at delivering good quality at fair prices. Again, our success 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

ARK RESTAURANTS CORP.

Corporate Office

Michael Weinstein, Chairman and Chief Executive Officer
Anthony J. Sirica, Chief Financial Officer and Treasurer
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
Linda Clous, Director of Facilities Management
Michelle Dudenake, 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
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

Adam Rios, 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.

Michelle Joseph, 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
Mark Zakin, Gallagher's Steakhouse
Kelly Rosas, America
Jeff Stein, Broadway Burger Bar & Grill

Restaurant General Managers-Florida

Michael Diascro, Rustic Inn
Edgar Gonzalez-Pratt, Hollywood Food Court
Darvin Pratts, Tampa Food Court
Robert Rae, Shuckers
CJ Nickoson, JB's on the Beach

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

Shawn Wallace, Gallagher's Steakhouse
Emery Allen, Broadway Burger Bar & Grill
Adriana Soto, America
Richard Harris, Banquets
Carlos Alzate, 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
Eric Luban, JB's on the Beach

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

Overview

As of September 28, 2019, the Company owned and operated 20 restaurants and bars, 17 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 28, 2019 includes revenues and operating losses of approximately \$3,380,000 and (\$122,000), respectively, related to *JB's on the Beach* in Deerfield Beach, Florida which was acquired on May 15, 2019.

Accounting Period

Our fiscal year ends on the Saturday nearest September 30. We report fiscal years under a 52/53-week format. This reporting method is used by many companies in the hospitality industry and is meant to improve year-to-year comparisons of operating results. Under this method, certain years will contain 53 weeks. The fiscal years ended September 28, 2019 and September 29, 2018 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 \$7,209,000 for the year ended September 28, 2019 (which excludes losses on the closure of *Durgin-Park* and an impairment loss from a write-down of long-lived assets related to *Clyde Frazier's Wine and Dine*) increased 43.3% compared to restaurant operating income of \$5,032,000 for the year ended September 29, 2018. This increase resulted primarily from strong performance at our properties located in Florida and Alabama, increased profitability at our Washington, D.C. properties as a result of a renegotiated month-to-month rent on one and strong catering revenues at the other and the elimination of losses in the prior period of approximately \$650,000 related to *Durgin-Park*, which was closed in January 2019, partially offset by increased labor costs, higher legal fees and losses in the amount of approximately \$200,000 at our food court in Tampa, Florida which was closed for renovation for the last four months of the fiscal year.

The following table summarizes the significant components of the Company's operating results for the years ended September 28, 2019 and September 29, 2018, respectively:

	Year Ended		Variance	
	September 28, 2019	September 29, 2018	\$	%
REVENUES:				
Food and beverage sales	\$ 159,125	\$ 156,837	\$ 2,288	1.5 %
Other revenue	3,229	3,153	76	2.4 %
Total revenues	162,354	159,990	2,364	1.5 %
COSTS AND EXPENSES:				
Food and beverage cost of sales	43,435	43,036	399	0.9 %
Payroll expenses	56,675	55,620	1,055	1.9 %
Occupancy expenses	17,413	18,577	(1,164)	-6.3 %
Other operating costs and expenses	20,378	21,437	(1,059)	-4.9 %
General and administrative expenses	12,011	11,214	797	7.1 %
Depreciation and amortization	5,233	5,074	159	3.1 %
Total costs and expenses	155,145	154,958	187	0.1 %
RESTAURANT OPERATING INCOME	7,209	5,032	2,177	43.3 %
Loss on closure of <i>Durgin-Park</i>	(1,106)	—	(1,106)	N/A
Impairment loss from write-down of long-lived assets	(2,857)	—	(2,857)	N/A
OPERATING INCOME	\$ 3,246	\$ 5,032	\$ (1,786)	-35.5 %

Revenues

During the year ended September 28, 2019, revenues increased 1.5% compared to the year ended September 29, 2018. This increase resulted primarily from: (i) revenues related to *JB's on the Beach* in Deerfield Beach, Florida (which was acquired on May 15, 2019), and (ii) the same-store sales impacts discussed below, partially offset by revenues related to *Durgin-Park*, which was closed in January 2019.

Food and Beverage Same-Store Sales

On a Company-wide basis, same-store food and beverage sales increased 0.3% for the year ended September 28, 2019 as compared to the year ended September 29, 2018 as follows:

	Year Ended		Variance	
	September 28, 2019	September 29, 2018	\$	%
	(in thousands)			
Las Vegas	\$ 48,787	\$ 47,852	\$ 935	2.0 %
New York	39,324	39,636	(312)	-0.8 %
Washington, DC	13,028	13,253	(225)	-1.7 %
Atlantic City, NJ	6,954	7,406	(452)	-6.1 %
Connecticut	1,980	2,120	(140)	-6.6 %
Alabama	14,048	13,534	514	3.8 %
Florida	28,219	28,068	151	0.5 %
Same-store sales	152,340	151,869	\$ 471	0.3 %
Other	6,785	4,968		
Food and beverage sales	\$ 159,125	\$ 156,837		

Same-store sales in Las Vegas increased 2.0% primarily as a result of better traffic at one of our properties which was under renovation last year, stronger than expected catering revenues and continued increased traffic near the New York-New York Hotel & Casino as a result of the opening of the T-Mobile Arena nearby. Same-store sales in New York decreased 0.8% primarily as a result of increased competition and construction on the building where one of our properties is located. Same-store sales in Washington, DC, decreased 1.7% due to decreased traffic at our *Thunder Grill* property located in Union Station as a result of a major tenant vacating the adjacent space. Same-store sales in Atlantic City, NJ decreased 6.1% as a result of increased competition from the opening of several new casinos. Same-store sales in Connecticut decreased 6.6% due to declining traffic at the Foxwoods Resort and Casino where our property is located. Same-store sales in Alabama increased 3.8% primarily as a result of better weather conditions in the current period. Same-store sales in Florida increased 0.5% as a result of higher traffic and modest menu price increases partially offset by the temporary closure for renovation of our food court at the Hard Rock Hotel and Casino in Tampa, Florida. Other food and beverage sales consist of sales related to new restaurants opened or acquired during the applicable period (i.e. *JB's on the Beach* - \$3,380,000 in 2019), sales related to properties that were closed (i.e. *Durgin-Park* - \$1,040,000 in 2019 and \$2,839,000 in 2018) and other fees.

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 Revenues

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 revenues for the year ended September 28, 2019 as compared to the year ended September 29, 2018 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 28, 2019 and September 29, 2018 were as follows (in thousands):

	Year Ended September 28, 2019	% to Total Revenues	Year Ended September 29, 2018	% to Total Revenues	Increase (Decrease)	
					\$	%
Food and beverage cost of sales	\$ 43,435	26.8 %	\$ 43,036	26.9 %	\$ 399	0.9 %
Payroll expenses	56,675	34.9 %	55,620	34.8 %	1,055	1.9 %
Occupancy expenses	17,413	10.7 %	18,577	11.6 %	(1,164)	-6.3 %
Other operating costs and expenses	20,378	12.6 %	21,437	13.4 %	(1,059)	-4.9 %
General and administrative expenses	12,011	7.4 %	11,214	7.0 %	797	7.1 %
Depreciation and amortization	5,233	3.2 %	5,074	3.2 %	159	3.1 %
Total costs and expenses	<u>\$ 155,145</u>		<u>\$ 154,958</u>		<u>\$ 187</u>	

Food and beverage costs as a percentage of total revenues for the year ended September 28, 2019 increased slightly as compared to last year as a result of increases in food costs partially offset by a better mix of catering versus a la carte business at our larger properties combined with menu price increases.

Payroll expenses as a percentage of total revenues for the year ended September 28, 2019 increased slightly as compared to 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 combined with menu price increases.

Occupancy expenses as a percentage of total revenues for the year ended September 28, 2019 decreased as compared to last year primarily as a result of a renegotiated month-to-month rent at one of our Washington, D.C. properties combined with higher sales at properties where the Company owns the premises at which the property operates.

Other operating costs and expenses as a percentage of total revenues for the year ended September 28, 2019 decreased as compared to last year as a result of cost cutting initiatives and higher restaurant-level legal fees in the prior year.

General and administrative expenses (which relate solely to the corporate office in New York City) as a percentage of total revenues for the year ended September 28, 2019 increased as compared to last year primarily as a result of annual wage increases and higher professional fees.

Depreciation and amortization expense for the year ended September 28, 2019 increased as compared to last year primarily as a result of fixed asset additions placed in service during 2019.

Loss on closure of Durgin-Park

As of December 29, 2018, the Company determined that it would not be able to operate *Durgin-Park* profitably due to decreased traffic at the Faneuil Hall Marketplace in Boston, MA, where it was located, and rising labor costs. As a result, included in the statement of income for the year ended September 28, 2019 are losses on closure in the amount of \$1,106,000 consisting of: (i) impairment of trademarks in the amount of \$721,000, (ii) accelerated depreciation of fixed assets in the amount of \$333,000, and (iii) write-offs of prepaid and other expenses in the amount of \$52,000. The restaurant closed on January 12, 2019.

Impairment loss from write-down of long-lived assets

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. As a result of the underperformance and increased competition at *Clyde Frazier's Wine and Dine*, the Company has recorded an impairment charge of \$2,857,000 in the year ended September 28, 2019 related to this property.

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 judgment 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 consolidated 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 in 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 28, 2019 was approximately 24%.

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 was complete as of September 29, 2018 with no significant differences from our provisional estimates.

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 the year ended September 28, 2019 increased to \$10,615,000 as compared to \$9,575,000 for the year ended September 29, 2018 and was attributable to increased restaurant-level operating income and 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 the year ended September 28, 2019 was \$3,196,000 and resulted primarily from purchases of fixed assets at existing restaurants.

Net cash used in investing activities for the year ended September 29, 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 financing activities for the years ended September 28, 2019 and September 29, 2018 of \$5,254,000 and \$919,000, 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 \$4,373,000 at September 28, 2019 as compared with a 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 18, 2020.

On January 3, 2019, April 5, 2019, July 8, 2019 and October 7, 2019, 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 dividends 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 and Other Developments

On May 15, 2019, the Company, through a newly formed, wholly-owned subsidiary, acquired the assets of *JB's on the Beach*, a restaurant and bar located in Deerfield Beach, Florida for \$7,036,000. 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 \$7,000,000 and cash from operations.

During 2019, the Company was advised by the landlord of our food court at the Hard Rock Casino and Hotel in Hollywood, Florida that they were exercising their right to relocate our space, at their sole cost, as contractually agreed to in the original lease. The new facilities were completed on September 16, 2019, on which date we closed our existing location and opened the new facilities. The Company recorded the value of the renovations made by the landlord, which includes leasehold improvements and furniture, fixtures and equipment, in the amount of \$5,474,000 with a corresponding increase in deferred rent. The net book value of the existing leasehold improvements relating to the original location in the amount of \$918,000 is being reflected as a reduction of deferred rent on a straight-line basis over the remaining lease term. In addition, the Company recorded an impairment loss on the existing the furniture, fixtures and equipment in the amount of \$8,000 which is included in depreciation and amortization expense for the year ended September 28, 2019.

During 2019, the Company was advised by the landlord of our food court at the Hard Rock Casino and Hotel in Tampa, Florida that they were exercising their right to renovate the front of the house space, at their sole cost, as contractually agreed to in the original lease. In connection with this renovation, we closed our existing facilities on June 2, 2019 and re-opened the renovated facilities on September 28, 2019. The Company recorded the value of the renovations made by the landlord, which includes leasehold improvements and furniture, fixtures and equipment, in the amount of \$3,179,000 with a corresponding increase in deferred rent. The net book value of the existing leasehold improvements relating to the original location in the amount of \$459,000 is being reflected as a reduction of deferred rent on a straight-line basis over the remaining lease term. In addition, the Company recorded an impairment loss on the existing furniture, fixtures and equipment in the amount of \$123,000 which is included in depreciation and amortization expense for the year ended September 28, 2019.

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. The principal and accrued interest related to this note in the amounts of \$1,713,000 and \$1,928,000, are included in Investment In and Receivable From New Meadowlands Racetrack in the consolidated balance sheets at September 28, 2019 and September 29, 2018, respectively.

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

Recent Restaurant Dispositions and Charges

As of December 29, 2018, the Company determined that it would not be able to operate *Durgin-Park* profitably due to decreased traffic at the Faneuil Hall Marketplace in Boston, MA, where it was located, and rising labor costs. As a result, included in the consolidated statement of income for the year ended September 28, 2019 are losses on closure in the amount of \$1,106,000 consisting of: (i) impairment of trademarks in the amount of \$721,000, (ii) accelerated depreciation of fixed assets in the amount of \$333,000, and (iii) write-offs of prepaid and other expenses in the amount of \$52,000. The restaurant closed on January 12, 2019.

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:

Revenue Recognition

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2014-09, Revenue from Contracts with Customers, and issued subsequent amendments to the initial guidance to provide additional clarification on specific topics (“ASC 606”). This ASU 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. We adopted ASC 606 using the modified retrospective method on September 30, 2018 and, based on our evaluation of our revenue streams, determined that there was not a material impact as of the date of adoption between the new revenue standard and how we previously recognized revenue, and therefore the adoption did not have a material impact on our consolidated financial statements.

We recognize revenues when it satisfies a performance obligation by transferring control over a product or service to a restaurant guest or other customer. Revenues from restaurant operations are presented net of discounts, coupons, employee meals and complimentary meals and recognized when food, beverage and retail products are sold. Sales tax collected from customers is excluded from sales and the obligation is included in sales tax payable until the taxes are remitted to the appropriate taxing authorities. Catering service revenue is generated through contracts with customers whereby the customer agrees to pay a contract rate for the service. Revenues from catered events are recognized in income upon satisfaction of the performance obligation (the date the event is held) and all customer payments, including nonrefundable upfront deposits, are deferred as a liability until such time. We recognized \$13,817,000 and \$12,878,000 in catering services revenue for the years ended September 28, 2019 and September 29, 2018, respectively. Unearned revenue which is included in accrued expenses and other current liabilities on the consolidated balance sheets as of September 28, 2019 and September 29, 2018 was \$4,549,000 and \$4,439,000, respectively.

Revenues from gift cards are deferred and recognized upon redemption. Deferrals are not reduced for potential non-use as we generally have a legal obligation to remit the value of unredeemed gift cards to the relevant jurisdictions in which they are sold. As of September 28, 2019 and September 29, 2018, the total liability for gift cards in the amounts of approximately \$203,000 and \$170,000, respectively, are included in accrued expenses and other current liabilities in the consolidated balance sheets.

Other revenues include 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.

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 consolidated 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, 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. As a result of the underperformance and increased competition at *Clyde Frazier's Wine and Dine*, we recorded an impairment charge of \$2,857,000 in fiscal 2019 related to this property. No impairment charges were warranted at September 29, 2018.

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 28, 2019 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.

In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842), which will require lessees to recognize assets and liabilities for leases with lease terms of more than 12 months. Consistent with current GAAP, the recognition, measurement, and presentation of expenses and cash flows arising from a lease by a lessee primarily will depend on its classification as a finance or operating lease. However, unlike current GAAP, which requires only capital leases to be recognized on the balance sheet, the new

guidance will require both types of leases to be recognized on the balance sheet. This guidance is effective for interim and annual periods beginning after December 15, 2018, with early adoption permitted. In August 2018, the FASB issued ASU No. 2018-11, Leases (Topic 842): Targeted Improvements, which permits adoption of the guidance in ASU 2016-02 using either a modified retrospective transition, requiring application at the beginning of the earliest comparative period presented or a transition method whereby companies could continue to apply existing lease guidance during the comparative periods and apply the new lease requirements through a cumulative-effect adjustment in the period of adoption rather than in the earliest period presented without adjusting historical financial statements. We will adopt the new standard on September 29, 2019 and use the effective date of initial application. Consequently, financial information will not be updated and the disclosures required under the new standard will not be provided for dates and periods before September 29, 2019. The new standard provides a number of optional practical expedients in transition. We expect to elect the "package of expedients", which permits us not to reassess under the new standard our prior conclusions about lease identification and initial direct costs. We do not expect to elect the use of hindsight or the practical expedient pertaining to land easements, the latter not being applicable to the Company. The new standard also provides practical expedients for the Company's ongoing accounting. We currently expect to elect the short-term lease recognition exemption for all leases that qualify. This means, for those leases that qualify, we will not recognize right-of-use assets or lease liabilities, and this includes not recognizing right-of-use assets or lease liabilities for existing short-term leases of those assets in transition. We expect the most significant change will be related to the recognition of right-of-use assets and lease liabilities on our consolidated balance sheet for real estate operating leases. As a result of the adoption of this guidance, we anticipate that we will record right-of-use assets and lease liabilities ranging from \$52 million to \$56 million primarily related to our real estate operating leases. We also expect that the adoption of this guidance will result in additional lease-related disclosures in the footnotes to our consolidated financial statements.

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 and trademarks are not amortized, but are subject to impairment analysis. We assess the potential impairment of goodwill and trademarks annually (at the end of our fourth quarter) and on an interim basis whenever events or changes in circumstances indicate that the carrying value may not be recoverable. If we determine through the impairment review process that goodwill or trademarks are impaired, we record an impairment charge in our consolidated statements of income.

Such impairment analyses for goodwill requires a comparison of the fair value of the Company's equity to the carrying amount of goodwill since the Company operates in one segment. At September 28, 2019 and September 29, 2018, we performed qualitative assessments of factors to determine whether further impairment testing of goodwill was required. Based on this assessment, no impairment losses were warranted at September 28, 2019 and September 29, 2018. Qualitative factors considered in this assessment included 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.

Our impairment analysis for trademarks consists of a comparison of the fair value to the carrying value of the assets. This comparison is made based on a review of historical, current and forecasted sales and profit levels, as well as a review of any factors that may indicate potential impairment. As of December 29, 2018, the Company recorded an impairment charge of \$721,000 related to its *Durgin-Park* trademark as discussed above. For the years ended September 28, 2019 and September 29, 2018, our impairment analysis did not result in any other charges related to trademarks.

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 2019 and the expected dates of adoption and the anticipated impact on the consolidated financial statements.

Recent Developments

See Note 15 of Notes to Consolidated Financial Statements for a description of recent developments that have occurred subsequent to September 28, 2019

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, 2019, there were 30 holders of record of our common stock and approximately an additional 1,434 beneficial owners.

Dividend Policy

On December 5, 2017, March 6, 2018, June 12, 2018, September 17, 2018, December 3, 2018, March 1, 2019, June 13, 2019, September 9, 2019 and November 26, 2019, our Board of Directors declared quarterly cash dividends in the amount of \$0.25 per share. We intend to continue to pay such quarterly cash dividends for the foreseeable future; however, the payment of future dividends is at the discretion of our Board of Directors and is based on future earnings, cash flow, financial condition, capital requirements, changes in U.S. taxation and other relevant factors.

Purchases of Equity Securities by Issuer and Affiliated Purchases

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

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 28, 2019 and September 29, 2018, 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 28, 2019, 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 28, 2019 and September 29, 2018, and the results of its operations and its cash flows for each of the years in the two-year period ended September 28, 2019, 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 17, 2019

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

	<u>September 28, 2019</u>	<u>September 29, 2018</u>
<u>ASSETS</u>		
CURRENT ASSETS:		
Cash and cash equivalents (includes \$170 at September 28, 2019 and \$181 at September 29, 2018 related to VIEs)	\$ 7,177	\$ 5,012
Accounts receivable (includes \$219 at September 28, 2019 and \$354 at September 29, 2018 related to VIEs)	2,621	3,452
Employee receivables	414	386
Inventories (includes \$41 at September 28, 2019 and \$19 at September 29, 2018 related to VIEs)	2,222	2,094
Prepaid and refundable income taxes (includes \$254 at September 28, 2019 and \$241 at September 29, 2018 related to VIEs)	254	721
Prepaid expenses and other current assets (includes \$12 at September 28, 2019 and \$51 at September 29, 2018 related to VIEs)	1,021	1,547
Total current assets	<u>13,709</u>	<u>13,212</u>
FIXED ASSETS - Net (includes \$236 at September 28, 2019 and \$0 at September 29, 2018 related to VIEs)	47,781	45,264
INTANGIBLE ASSETS - Net	303	349
GOODWILL	15,570	9,880
TRADEMARKS	3,720	3,331
DEFERRED INCOME TAXES	4,106	2,988
INVESTMENT IN AND RECEIVABLE FROM NEW MEADOWLANDS RACETRACK	6,821	7,036
OTHER ASSETS (includes \$82 at September 28, 2019 and September 29, 2018 related to VIEs)	2,642	2,677
TOTAL ASSETS	<u>\$ 94,652</u>	<u>\$ 84,737</u>
<u>LIABILITIES AND EQUITY</u>		
CURRENT LIABILITIES:		
Accounts payable - trade (includes \$65 at September 28, 2019 and \$158 at September 29, 2018 related to VIEs)	\$ 3,549	\$ 5,019
Accrued expenses and other current liabilities (includes \$440 at September 28, 2019 and \$348 at September 29, 2018 related to VIEs)	10,672	10,702
Accrued income taxes	285	—
Dividend payable	875	868
Current portion of notes payable	2,701	1,251
Total current liabilities	<u>18,082</u>	<u>17,840</u>
OPERATING LEASE DEFERRED CREDIT (includes (\$30) at September 28, 2019 and (\$21) at September 29, 2018 related to VIEs)	10,077	3,301
NOTES PAYABLE, LESS CURRENT PORTION, net of deferred financing costs	23,786	19,860
TOTAL LIABILITIES	<u>51,945</u>	<u>41,001</u>
COMMITMENTS AND CONTINGENCIES		
EQUITY:		
Common stock, par value \$0.01 per share - authorized, 10,000 shares; issued and outstanding, 3,499 shares at September 28, 2019 and 3,470 shares at September 29, 2018	35	35
Additional paid-in capital	13,277	12,897
Retained earnings	28,552	29,364
Total Ark Restaurants Corp. shareholders' equity	<u>41,864</u>	<u>42,296</u>
NON-CONTROLLING INTERESTS	843	1,440
TOTAL EQUITY	<u>42,707</u>	<u>43,736</u>
TOTAL LIABILITIES AND EQUITY	<u>\$ 94,652</u>	<u>\$ 84,737</u>

See notes to consolidated financial statements.

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

	Year Ended	
	September 28, 2019	September 29, 2018
REVENUES:		
Food and beverage sales	\$ 159,125	\$ 156,837
Other revenue	3,229	3,153
Total revenues	<u>162,354</u>	<u>159,990</u>
COSTS AND EXPENSES:		
Food and beverage cost of sales	43,435	43,036
Payroll expenses	56,675	55,620
Occupancy expenses	17,413	18,577
Other operating costs and expenses	20,378	21,437
General and administrative expenses	12,011	11,214
Depreciation and amortization	5,233	5,074
Total costs and expenses	<u>155,145</u>	<u>154,958</u>
RESTAURANT OPERATING INCOME	7,209	5,032
Loss on closure of Durgin-Park	(1,106)	—
Impairment loss from write-down of long-lived assets	(2,857)	—
OPERATING INCOME	<u>3,246</u>	<u>5,032</u>
OTHER (INCOME) EXPENSE:		
Interest expense	1,437	1,163
Interest income	(61)	(57)
Total other expense, net	<u>1,376</u>	<u>1,106</u>
INCOME BEFORE BENEFIT FOR INCOME TAXES	1,870	3,926
Benefit for income taxes	(591)	(1,147)
CONSOLIDATED NET INCOME	2,461	5,073
Net (income) loss attributable to non-controlling interests	215	(418)
NET INCOME ATTRIBUTABLE TO ARK RESTAURANTS CORP.	<u>\$ 2,676</u>	<u>\$ 4,655</u>
NET INCOME PER ARK RESTAURANTS CORP. COMMON SHARE:		
Basic	<u>\$ 0.77</u>	<u>\$ 1.35</u>
Diluted	<u>\$ 0.76</u>	<u>\$ 1.31</u>
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING:		
Basic	<u>3,479</u>	<u>3,439</u>
Diluted	<u>3,531</u>	<u>3,549</u>

See notes to consolidated financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
FOR THE YEARS ENDED SEPTEMBER 28, 2019 AND SEPTEMBER 29, 2018
(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, 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 paid and accrued - \$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
Net income (loss)	—	—	—	2,676	2,676	(215)	2,461
Exercise of stock options	41	—	503	—	503	—	503
Purchase and retirement of treasury shares	(12)	—	(235)	—	(235)	—	(235)
Stock-based compensation	—	—	112	—	112	—	112
Distributions to non-controlling interests	—	—	—	—	—	(382)	(382)
Dividends paid and accrued - \$1.00 per share	—	—	—	(3,488)	(3,488)	—	(3,488)
BALANCE - September 28, 2019	3,499	\$ 35	\$ 13,277	\$ 28,552	\$ 41,864	\$ 843	\$ 42,707

See notes to consolidated financial statements.

ARK RESTAURANTS CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

	Year Ended	
	September 28, 2019	September 29, 2018
CASH FLOWS FROM OPERATING ACTIVITIES:		
Consolidated net income	\$ 2,461	\$ 5,073
Adjustments to reconcile consolidated net income to net cash provided by operating activities:		
Stock-based compensation	112	47
Asset impairment on closure of Durgin-Park	1,067	—
Impairment loss from write-down of long-lived assets	2,857	—
Deferred income taxes	(1,118)	(1,497)
Accrued interest on note receivable from NMR	(61)	(57)
Depreciation and amortization	5,233	5,074
Amortization of deferred financing costs	35	21
Operating lease deferred credit	(499)	(347)
Changes in operating assets and liabilities:		
Accounts receivable	831	(99)
Inventories	(48)	(102)
Prepaid, refundable and accrued income taxes	752	224
Prepaid expenses and other current assets	513	441
Other assets	35	2
Accounts payable - trade	(1,475)	269
Accrued expenses and other current liabilities	(80)	526
Net cash provided by operating activities	<u>10,615</u>	<u>9,575</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of fixed assets	(3,419)	(5,063)
Loans and advances made to employees	(224)	(136)
Payments received on employee receivables	196	149
Interest payments received from NMR	276	—
Purchase of JB's on the Beach, net of cash acquired	(25)	—
Net cash used in investing activities	<u>(3,196)</u>	<u>(5,050)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Principal payments on notes payable	(1,608)	(2,067)
Borrowings under credit facility	650	5,086
Repayments of borrowings under credit facility	(650)	—
Payment of debt financing costs	(51)	(125)
Dividends paid	(3,481)	(3,443)
Proceeds from issuance of stock upon exercise of stock options	268	604
Distributions to non-controlling interests	(382)	(974)
Net cash used in financing activities	<u>(5,254)</u>	<u>(919)</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS	<u>2,165</u>	<u>3,606</u>
CASH AND CASH EQUIVALENTS, Beginning of year	5,012	1,406
CASH AND CASH EQUIVALENTS, End of year	<u>\$ 7,177</u>	<u>\$ 5,012</u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid during the year for:		
Interest	\$ 1,420	\$ 1,008
Income taxes	<u>732</u>	<u>127</u>
Non-cash investing activities:		
Landlord provided fixed assets	<u>\$ 8,653</u>	<u>\$ —</u>
Non-cash financing activities:		
Note payable in connection with the purchase of JB's on the Beach	<u>\$ 7,000</u>	<u>\$ —</u>
Refinancing of credit facility borrowings to term notes	<u>\$ 3,200</u>	<u>\$ 4,430</u>
Accrued dividend	<u>\$ 875</u>	<u>\$ 868</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 28, 2019, Ark Restaurants Corp. and Subsidiaries (the “Company”) owned and operated 20 restaurants and bars, 17 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, three 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 in the Tropicana Hotel and Casino. The operation at the Foxwoods Resort Casino consists of one fast food concept. The Florida operations include *The Rustic Inn* in Dania Beach, *Shuckers* in Jensen Beach, *JB's on the Beach* in Deerfield Beach, and the operation of four fast food facilities in Tampa and six fast food facilities in Hollywood, each at a Hard Rock Hotel and Casino. In Alabama, the Company operates two *Original Oyster Houses*, one in Gulf Shores and one in Spanish Fort.

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 \$4,373,000 at September 28, 2019. 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 18, 2020.

Accounting Period — The Company’s fiscal year ends on the Saturday nearest September 30. The fiscal years ended September 28, 2019 and September 29, 2018 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 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 28, 2019, the Company had accounts receivable balances due from one hotel operator totaling 34% of total accounts receivable. As of September 29, 2018, the Company had accounts receivable balances due from two hotel operators totaling 47% of total accounts receivable.

For the years ended September 28, 2019 and September 29, 2018, the Company made purchases from one vendor that accounted for 12% and 10% of total purchases, respectively.

As of September 28, 2019, 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 net realizable value, 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 renovations. 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 6 for information regarding impairment charges for the year ended September 28, 2019.

Goodwill and Trademarks — Goodwill and trademarks are not amortized, but are subject to impairment analysis. We assess the potential impairment of goodwill and trademarks annually (at the end of our fourth quarter) and on an interim basis whenever events or changes in circumstances indicate that the carrying value may not be recoverable. If we determine through the impairment review process that goodwill or trademarks are impaired, we record an impairment charge in our consolidated statements of income.

Such impairment analyses for goodwill requires a comparison of the fair value of the Company's equity to the carrying amount of goodwill since the Company operates in one segment. At September 28, 2019 and September 29, 2018, the Company

performed qualitative assessments of factors to determine whether further impairment testing of goodwill was required. Based on this assessment, no impairment losses were warranted at September 28, 2019 and September 29, 2018 as the fair value of the Company's equity is well in excess of its carrying amount. Qualitative factors considered in this assessment included 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.

Our impairment analysis for trademarks consists of a comparison of the fair value to the carrying value of the assets. This comparison is made based on a review of historical, current and forecasted sales and profit levels, as well as a review of any factors that may indicate potential impairment. As of December 29, 2018, the Company recorded an impairment charge of \$721,000 related to its *Durgin-Park* trademark (see Note 4). For the years ended September 28, 2019 and September 29, 2018, our impairment analysis did not result in any other charges related to trademarks.

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 — The Company recognizes revenue when it satisfies a performance obligation by transferring control over a product or service to a restaurant guest or other customer. Revenues from restaurant operations are presented net of discounts, coupons, employee meals and complimentary meals and recognized when food, beverage and retail products are sold. Sales tax collected from customers is excluded from sales and the obligation is included in sales tax payable until the taxes are remitted to the appropriate taxing authorities. Catering service revenue is generated through contracts with customers whereby the customer agrees to pay a contract rate for the service. Revenues from catered events are recognized in income upon satisfaction of the performance obligation (the date the event is held). All customer payments, including nonrefundable upfront deposits, are deferred as a liability until such time. The Company recognized \$13,817,000 and \$12,878,000 in catering services revenue for the years ended September 28, 2019 and September 29, 2018, respectively. Unearned revenue which is included in accrued expenses and other current liabilities on the consolidated balance sheets as of September 28, 2019 and September 29, 2018 was \$4,549,000 and \$4,439,000, respectively.

Revenues from gift cards are deferred and recognized upon redemption. Deferrals are not reduced for potential non-use as we generally have a legal obligation to remit the value of unredeemed gift cards to the relevant jurisdictions in which they are sold. As of September 28, 2019 and September 29, 2018, the total liability for gift cards in the amounts of approximately \$203,000 and \$170,000, respectively, are included in accrued expenses and other current liabilities in the consolidated balance sheets.

Other revenues include purchase service fees which represent commissions earned by a subsidiary of the Company for providing services to other restaurant groups, as well as license fees, property management fees and other rentals.

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 28, 2019 and September 29, 2018, 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 May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2014-09, Revenue from Contracts with Customers, and issued subsequent amendments to the initial guidance to provide additional clarification on specific topics (“ASC 606”). This ASU 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 Company adopted ASC 606 using the modified retrospective method on September 30, 2018 and, based on our evaluation of our revenue streams, determined that there was not a material impact as of the date of adoption between the new revenue standard and how we previously recognized revenue, and therefore the adoption did not have a material impact on our consolidated financial statements.

In January 2016, FASB issued ASU No. 2016-01, Financial Instruments – Overall: Recognition and Measurement of Financial Assets and Financial Liabilities. The guidance requires 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 also simplified 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 Company adopted this guidance in the first quarter of fiscal 2019 with respect to its investment in New Meadowlands Racetrack (see Note 5). Such adoption did not have a material impact on our consolidated financial statements.

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. The

Company adopted this guidance in the first quarter of fiscal 2019. Such adoption did not 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. The Company adopted this guidance in the first quarter of fiscal 2019. Such adoption did not 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. The Company adopted this guidance in the first quarter of fiscal 2019. Such adoption did not have a material impact on our consolidated financial statements.

New Accounting Standards Not Yet Adopted — In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842), which will require lessees to recognize assets and liabilities for leases with lease terms of more than 12 months. Consistent with current GAAP, the recognition, measurement, and presentation of expenses and cash flows arising from a lease by a lessee primarily will depend on its classification as a finance or operating lease. However, unlike current GAAP, which requires only capital leases to be recognized on the balance sheet, the new guidance will require both types of leases to be recognized on the balance sheet. This guidance is effective for interim and annual periods beginning after December 15, 2018, with early adoption permitted. In August 2018, the FASB issued ASU No. 2018-11, Leases (Topic 842): Targeted Improvements, which permits adoption of the guidance in ASU 2016-02 using either a modified retrospective transition, requiring application at the beginning of the earliest comparative period presented or a transition method whereby companies could continue to apply existing lease guidance during the comparative periods and apply the new lease requirements through a cumulative-effect adjustment in the period of adoption rather than in the earliest period presented without adjusting historical financial statements. The Company will adopt the new standard on September 29, 2019 and use the effective date of initial application. Consequently, financial information will not be updated and the disclosures required under the new standard will not be provided for dates and periods before September 29, 2019. The new standard provides a number of optional practical expedients in transition. The Company expects to elect the "package of expedients", which permits the Company not to reassess under the new standard the Company's prior conclusions about lease identification and initial direct costs. The Company does not expect to elect the use of hindsight or the practical expedient pertaining to land easements, the latter not being applicable to the Company. The new standard also provides practical expedients for the Company's ongoing accounting. The Company currently expect to elect the short-term lease recognition exemption for all leases that qualify. This means, for those leases that qualify, the Company will not recognize right-of-use assets or lease liabilities, and this includes not recognizing right-of-use assets or lease liabilities for existing short-term leases of those assets in transition. The Company expects the most significant change will be related to the recognition of right-of-use assets and lease liabilities on the Company's balance sheet for real estate operating leases. As a result of the adoption of this guidance, the Company anticipates that it will record right-of-use assets and lease liabilities ranging from \$52,000,000 to \$56,000,000 primarily related to its real estate operating leases. The Company also expects that the adoption of this guidance will result in additional lease-related disclosures in the footnotes to its consolidated financial statements.

In June 2018, the FASB issued ASU 2018-07, Compensation - Stock Compensation (Topic 718): Improvements to Non-employee Share-Based Payment Accounting, which simplifies the accounting for share-based payments granted to non-employees for goods and services. Under this ASU, the guidance on share-based payments to non-employees would be aligned with the requirements for share-based payments granted to employees, with certain exceptions. This ASU is effective for fiscal years beginning after December 15, 2018, and interim periods within those years. The adoption of this standard is not expected to result in a material impact to the Company's 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 28, 2019	September 29, 2018
	(in thousands)	
Cash and cash equivalents	\$ 170	\$ 181
Accounts receivable	219	354
Inventories	41	19
Prepaid and refundable income taxes	254	241
Prepaid expenses and other current assets	12	51
Due from Ark Restaurants Corp. and affiliates (1)	392	338
Fixed assets - net	236	—
Other assets	82	82
Total assets	<u>\$ 1,406</u>	<u>\$ 1,266</u>
Accounts payable - trade	\$ 65	\$ 158
Accrued expenses and other current liabilities	440	348
Operating lease deferred credit	(30)	(21)
Total liabilities	475	485
Equity of variable interest entities	931	781
Total liabilities and equity	<u>\$ 1,406</u>	<u>\$ 1,266</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 AND OTHER DEVELOPMENTS

On May 15, 2019, the Company, through a newly formed, wholly-owned subsidiary, acquired the assets of *JB's on the Beach*, a restaurant and bar located in Deerfield Beach, Florida for \$7,036,000. 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 \$7,000,000 and cash from operations. The fair values of the assets acquired, none of which are amortizable, were allocated as follows (amounts in thousands):

Cash	\$ 11
Inventory	80
Furniture, fixtures and equipment	200
Trademarks	1,110
Goodwill	5,690
Liabilities assumed	(55)
	<u>\$ 7,036</u>

Goodwill recognized in connection with this transaction represents the residual amount of the purchase price over separately identifiable intangible assets and is expected to be deductible for tax purposes.

Concurrent with the acquisition, the Company entered into a 20 year lease (with a five year option) for the restaurant facility and parking lot with the former owner of *JB's on the Beach*, who is also the owner of the underlying real estate. Rent payments under the lease are \$600,000 per year with 10% increases every five years.

The consolidated statements of income for the year ended September 28, 2019 includes revenues and operating losses of approximately \$3,380,000 and (\$122,000), respectively, related to *JB's on the Beach*. The unaudited pro forma financial information set forth below is based upon the Company's historical consolidated statements of income for the years ended

September 28, 2019 and September 29, 2018 and includes the results of operations for *JB's on the Beach* for the periods prior to acquisition. The unaudited pro forma financial information, which has been adjusted for rent payments under the lease discussed above as well as interest expense of the term loan, is presented for informational purposes only and may not be indicative of what actual results of operations would have been had the acquisition of *JB's on the Beach* occurred on the dates indicated, nor does it purport to represent the results of operations for future periods (amounts in thousands, except per share amounts).

	<u>Year Ended</u> <u>September 28,</u> <u>2019</u>	<u>Year Ended</u> <u>September 29,</u> <u>2018</u>
	(unaudited)	(unaudited)
Total revenues	\$ 170,132	\$ 171,219
Net income	\$ 3,336	\$ 5,384
Net income per share - basic	\$ 0.96	\$ 1.57
Net income per share - diluted	\$ 0.94	\$ 1.52

During 2019, the Company was advised by the landlord of our food court at the Hard Rock Casino and Hotel in Hollywood, Florida that they were exercising their right to relocate our space, at their sole cost, as contractually agreed to in the original lease. The new facilities were completed on September 16, 2019 on which date we closed our existing location and opened the new facilities. The Company recorded the value of the renovations made by the landlord, which includes leasehold improvements and furniture, fixtures and equipment, in the amount of \$5,474,000 with a corresponding increase in deferred rent. The net book value of the existing leasehold improvements relating to the original location in the amount of \$918,000 is being reflected as a reduction of deferred rent on a straight-line basis over the remaining lease term.

During 2019, the Company was advised by the landlord of our food court at the Hard Rock Casino and Hotel in Tampa, Florida that they were exercising their right to renovate the front of the house space, at their sole cost, as contractually agreed to in the original lease. In connection with this renovation we closed our existing facilities on June 2, 2019 and re-opened the renovated facilities on September 28, 2019. The Company recorded the value of the renovations made by the landlord, which includes leasehold improvements and furniture, fixtures and equipment, in the amount of \$3,179,000 with a corresponding increase in deferred rent. The net book value of the existing leasehold improvements relating to the original location in the amount of \$459,000 is being reflected as a reduction of deferred rent on a straight-line basis over the remaining lease term.

4. RECENT RESTAURANT DISPOSITIONS

As of December 29, 2018, the Company determined that it would not be able to operate *Durgin-Park* profitably due to decreased traffic at the Faneuil Hall Marketplace in Boston, MA, where it was located, and rising labor costs. As a result, included in the consolidated statement of income for the year ended September 28, 2019 are losses on closure in the amount of \$1,106,000 consisting of: (i) impairment of trademarks in the amount of \$721,000, (ii) accelerated depreciation of fixed assets in the amount of \$333,000, and (iii) write-offs of prepaid and other expenses in the amount of \$52,000. The restaurant closed on January 12, 2019.

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 then 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. As of September 29, 2018, this investment was accounted for based on the cost method. As of September 30, 2018, the Company elected to account for this investment at cost, less impairment, adjusted for subsequent observable price changes in accordance with ASU No. 2016-01. Such change did not affect the value of our investment in NMR as no events or changes in circumstances occurred during the year ended September 28, 2019 that would indicate impairment and there are no observable prices for this investment. Any future changes in the carrying value of our Investment in NMR will be reflected in earnings.

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. 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 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). As of September 28, 2019 and September 29, 2018, no amounts were due AM VIE by NMR.

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 \$1,713,000 and \$1,928,000, are included in Investment In and Receivable From New Meadowlands Racetrack in the consolidated balance sheets at September 28, 2019 and September 29, 2018, respectively.

6. FIXED ASSETS

Fixed assets consist of the following:

	September 28, 2019	September 29, 2018
	(in thousands)	
Land and building	\$ 18,029	\$ 18,029
Leasehold improvements	53,570	53,310
Furniture, fixtures and equipment	38,207	37,910
Construction in progress	—	59
	<u>109,806</u>	<u>109,308</u>
Less: accumulated depreciation and amortization	62,025	64,044
Fixed Assets - Net	<u>\$ 47,781</u>	<u>\$ 45,264</u>

Depreciation and amortization expense related to fixed assets for the years ended September 28, 2019 and September 29, 2018 was \$5,056,000 and \$5,014,000, 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. As a result of the underperformance and increased competition at *Clyde Frazier's Wine and Dine*, the Company has recorded an impairment charge of \$2,857,000 in fiscal 2019 related to this property.

7. INTANGIBLE ASSETS, GOODWILL AND TRADEMARKS

Intangible assets consist of the following:

	September 28, 2019	September 29, 2018
	(in thousands)	
Purchased leasehold rights (a)	\$ 2,395	\$ 2,395
Noncompete agreements and other	253	253
	<u>2,648</u>	<u>2,648</u>
Less accumulated amortization	2,345	2,299
Intangible Assets - Net	<u>\$ 303</u>	<u>\$ 349</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 28, 2019 and September 29, 2018 was \$46,000 and \$60,000, respectively. Amortization expense for each of the next five years is expected to be \$46,000.

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 28, 2019 and September 29, 2018 are as follows:

	Goodwill	Trademarks
	(in thousands)	
Balance as of September 30, 2017	\$ 9,880	\$ 3,331
Acquired during the year	—	—
Impairment losses	—	—
Balance as of September 29, 2018	9,880	3,331
Acquired during the year	5,690	1,110
Impairment losses (see Note 4)	—	(721)
Balance as of September 28, 2019	<u>\$ 15,570</u>	<u>\$ 3,720</u>

8. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following:

	September 28, 2019	September 29, 2018
	(in thousands)	
Sales tax payable	\$ 1,141	\$ 820
Accrued wages and payroll related costs	2,942	3,226
Customer advance deposits	4,549	4,439
Accrued occupancy and other operating expenses	2,040	2,217
	<u>\$ 10,672</u>	<u>\$ 10,702</u>

9. NOTES PAYABLE – BANK

Long-term debt consists of the following:

	September 28, 2019	September 29, 2018
	(in thousands)	
Promissory Note - Rustic Inn purchase	\$ 4,043	\$ 4,327
Promissory Note - Shuckers purchase	4,675	5,015
Promissory Note - Oyster House purchase	4,728	5,346
Promissory Note - JB's on the Beach purchase	6,750	—
Promissory Note - Sequoia renovation	3,086	—
Revolving Facility	3,366	6,568
	26,648	21,256
Less: Current maturities	(2,701)	(1,251)
Less: Unamortized deferred financing costs	(161)	(145)
Long-term debt	<u>\$ 23,786</u>	<u>\$ 19,860</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 “Revolving Facility”), which expires on May 31, 2021. The Revolving Facility provides for total availability of the lesser of (i) \$10,000,000 and (ii) \$35,000,000 less the then aggregate amount of all indebtedness and obligations to BHBM. Borrowings under the Revolving Facility are payable upon

maturity of the Revolving Facility with interest payable monthly at LIBOR plus 3.5%, subject to adjustment based on certain ratios. As of September 28, 2019 and September 29, 2018, borrowings of \$3,366,000 and \$6,568,000, respectively, were outstanding under the Revolving Facility and had a weighted average interest rate of 4.9% and 5.4%, 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 \$71,333, which commenced on September 1, 2018, with a balloon payment of \$2,474,000 on June 1, 2025 and bears interest at LIBOR plus 3.5% 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 \$2,805,000 on June 1, 2025 and bears interest at LIBOR plus 3.5% 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 \$117,857, which commenced on September 1, 2018, with a balloon payment of \$1,060,716 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 \$1,210,000 on June 1, 2025 and bears interest at LIBOR plus 3.5% per annum.
- *Promissory Note - JB's on the Beach purchase* – On May 15, 2019, in connection with the previously discussed acquisition of *JB's on the Beach*, the Company issued a promissory note under the Revolving Facility to BHBM for \$7,000,000 which is payable in 23 equal quarterly installments of \$250,000, commencing on September 1, 2019, with a balloon payment of \$1,250,000 on June 1, 2025 and bears interest at LIBOR plus 3.5% per annum.
- *Promissory Note - Sequoia renovation* – Also on May 15, 2019, the Company converted \$3,200,000 of Revolving Facility borrowings incurred in connection with the *Sequoia* renovation to a promissory note which is payable in 23 equal quarterly installments of \$114,286, commencing on September 1, 2019, with a balloon payment of \$571,429 on June 1, 2025 and bears interest at LIBOR plus 3.5% per annum.

Deferred financing costs incurred in connection with the Revolving Facility in the amount of \$207,000 are being amortized over the life of the agreements on a straight-line basis and are included in interest expense. Amortization expense was \$35,000 and \$21,000 for the years ended September 28, 2019 and September 29, 2018, 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 28, 2019.

As of September 28, 2019, the aggregate amounts of notes payable maturities (excluding borrowings under the Revolving Facility) are as follows:

2020	\$	2,701
2021		2,701
2022		2,701
2023		3,526
2024		2,229

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 28, 2019, future minimum lease payments under non-cancelable leases are as follows:

Fiscal Year	<u>Amount</u> (in thousands)
2020	\$ 9,570
2021	9,553
2022	9,654
2023	8,022
2024	7,197
Thereafter	33,487
Total minimum payments	<u>\$ 77,483</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 \$13,879,000 and \$14,649,000 for the years ended September 28, 2019 and September 29, 2018, respectively. Contingent rentals, included in rent expense, were approximately \$5,336,000 and \$5,454,000 for the years ended September 28, 2019 and September 29, 2018, respectively.

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.

On May 1, 2018, two former tipped service workers (the “Plaintiffs”), individually and on behalf of all other similarly situated personnel, filed a putative class action lawsuit (the “Complaint”) against the Company and certain subsidiaries as well as certain officers of the Company (the “Defendants”). Plaintiffs allege, on behalf of themselves and the putative class, that the Company violated certain of the New York State Labor Laws and related regulations. The Complaint seeks unspecified money damages, together with interest, liquidated damages and attorney fees. There has been no discovery on the merits of the Complaint and the matter is still in the initial stages of discovery concerning whether the named Plaintiffs are seeking to represent an appropriate class of tipped service workers and, if so, whether the named Plaintiffs are appropriate class representatives. The Company’s Motion to Dismiss the Complaint was denied on June 27, 2019. The Company believes that the allegations and claims in the Complaint are without merit, and it intends to defend itself vigorously in this litigation. However, the outcomes of legal actions are unpredictable and subject to significant uncertainties, and thus it is inherently difficult to determine the probability or quantification of any loss. Based on information currently available, including the Company’s assessment of the facts underlying the Complaint and advice of counsel, the amount or range of reasonably possible losses, if any, cannot be estimated. Accordingly, the Company has not recorded any accrual related to this matter as of September 28, 2019.

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 \$3.46 per share and \$3.82 per share, respectively and totaled approximately \$94,000.

During the year ended September 28, 2019, options to purchase 23,000 shares of common stock at an exercise price of \$19.61 per share were granted to employees of the Company. Such options 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 \$3.48 per share and totaled approximately \$80,000.

During the year ended September 28, 2019, options to purchase 11,000 shares of common stock at an exercise price of \$20.18 per share were granted to employees of the Company. Such options are exercisable as to 25% of the shares commencing on the first anniversary of the date of grant and 25% on the second, third and fourth anniversary thereof. Such options had an aggregate grant date fair value of \$3.55 per share and totaled approximately \$39,000.

During the year ended September 28, 2019, options to purchase 19,500 shares of common stock with a strike price of \$12.04 were exercised on a net issue basis as provided in the 2010 Plan. Accordingly, 11,774 shares were immediately repurchased and retired from treasury.

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 2019 grants include a risk free interest rate of 2.52% -2.61%, volatility of 30.6%, a dividend yield of 5.1% and an expected life of 10 years. The assumptions used for the 2018 grants include a risk free interest rate 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 28, 2019, options to purchase 8,750 shares of common stock at a weighted average price of \$18.76 per share expired unexercised or were forfeited. During the year ended September 29, 2018, options to purchase 26,050 shares of common stock at an exercise price of \$18.60 per share expired unexercised.

The following table summarizes stock option activity under all plans:

	2019			2018			
	Shares	Weighted Average Exercise Price	Weighted Average Contractual Term	Aggregate Intrinsic Value	Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value
Outstanding, beginning of period	378,750	\$ 18.46	4.8 years		421,800	\$ 17.86	
Options:							
Granted	34,000	\$ 19.79			25,000	\$ 21.91	
Exercised	(40,500)	\$ 12.42			(42,000)	\$ 14.39	
Canceled or expired	<u>(8,750)</u>	\$ 18.76			<u>(26,050)</u>	\$ 18.60	
Outstanding and expected to	<u>363,500</u>	\$ 19.25	4.7 years	<u>\$ 807,000</u>	<u>378,750</u>	\$ 18.46	<u>\$ 1,824,400</u>
Exercisable, end of period	<u>328,500</u>	\$ 19.11	4.2 years	<u>\$ 797,000</u>	<u>366,250</u>	\$ 18.35	<u>\$ 1,807,300</u>
Shares available for future grant	441,000				475,000		

Compensation cost charged to operations for the years ended September 28, 2019 and September 29, 2018 for share-based compensation programs was approximately \$112,000 and \$47,000, respectively. The compensation cost recognized is classified as a general and administrative expense in the consolidated statements of income.

As of September 28, 2019, there was approximately \$53,000 of unrecognized compensation cost related to unvested stock options, which is expected to be recognized over a period of 3.5 years.

The following table summarizes information about stock options outstanding as of September 28, 2019:

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)
\$14.40	132,500	\$ 14.40	2.7	132,500	\$ 14.40	2.7
\$22.50	172,000	\$ 22.50	4.7	172,000	\$ 22.50	4.7
\$19.61 - \$22.30	59,000	\$ 20.69	9.2	24,000	\$ 20.81	9.1
	<u>363,500</u>	\$ 19.25	4.7	<u>328,500</u>	\$ 19.11	4.2

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) is not 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 in 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 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 was complete as of September 29, 2018 with no significant differences from our provisional estimates.

The provision for income taxes consists of the following:

	Year Ended	
	September 28, 2019	September 29, 2018
	(in thousands)	
Current provision (benefit):		
Federal	\$ 260	\$ 30
State and local	267	320
	<u>527</u>	<u>350</u>
Deferred provision (benefit):		
Federal	(931)	(798)
State and local	(187)	(699)
	<u>(1,118)</u>	<u>(1,497)</u>
	<u>\$ (591)</u>	<u>\$ (1,147)</u>

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

	Year Ended	
	September 28, 2019	September 29, 2018
	(in thousands)	
Provision at Federal statutory rate (21% in 2019 and 24% in 2018)	\$ 393	\$ 953
State and local income taxes, net of tax benefits	(160)	—
Tax credits	(1,029)	(789)
Income attributable to non-controlling interest	45	(102)
Changes in tax rates	2	181
Impact of Federal tax reform	—	(1,382)
Change in valuation allowance	81	(43)
Other	77	35
	<u>\$ (591)</u>	<u>\$ (1,147)</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:

	September 28, 2019	September 29, 2018
		(in thousands)
Deferred tax assets:		
State net operating loss carryforwards	\$ 4,406	\$ 4,141
Operating lease deferred credits	422	513
Deferred compensation	313	364
Tax credits	1,253	802
Partnership investments	347	—
Other	—	98
Deferred tax assets, before valuation allowance	<u>6,741</u>	<u>5,918</u>
Valuation allowance	(392)	(311)
Deferred tax assets, net of valuation allowance	<u>6,349</u>	<u>5,607</u>
Deferred tax liabilities:		
Depreciation and amortization	(2,049)	(2,080)
Partnership investments	—	(329)
Prepaid expenses	(194)	(210)
Deferred tax liabilities	<u>(2,243)</u>	<u>(2,619)</u>
Net deferred tax assets	<u>\$ 4,106</u>	<u>\$ 2,988</u>

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 \$392,000 and \$311,000 as of September 28, 2019 and September 29, 2018, respectively, attributable to state and local net operating loss carryforwards which are not realizable on a more-likely-than-not basis. During the year ended September 28, 2019, the Company's valuation allowance increased by approximately \$81,000 as the Company determined that certain state net operating losses became unrealizable on a more-likely-than-not basis.

As of September 28, 2019, the Company had General Business Credit carryforwards of approximately \$1,117,000 which expire through fiscal 2039. In addition, as of September 28, 2019, the Company has New York State net operating loss carryforwards of approximately \$23,061,000 and New York City net operating loss carryforwards of approximately \$21,576,000 that expire through fiscal 2039.

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

	September 28, 2019	September 29, 2018
	(in thousands)	
Balance at beginning of year	\$ 110	\$ 152
Additions based on tax positions taken in current and prior years	407	125
Settlements	(205)	(167)
Lapse in statute of limitations	(109)	—
Decreases based on tax positions taken in prior years	(45)	—
Balance at end of year	<u>\$ 158</u>	<u>\$ 110</u>

The entire amount of unrecognized tax benefits if recognized would reduce our annual effective tax rate. For the years ended September 28, 2019 and September 29, 2018, the Company has \$0 and \$38,000, respectively, accrued for the payment of interest and penalties. The Company does not expect a significant change to its unrecognized tax benefits within the next 12 months.

The Company files tax returns in the U.S. and various state and local jurisdictions with varying statutes of limitations. The 2016 through 2019 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. 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 shares used in calculating earnings per basic and diluted share follows:

	Year Ended	
	September 28, 2019	September 29, 2018
	(in thousands)	
Basic	\$ 3,479	\$ 3,439
Effect of dilutive securities:		
Stock options	52	110
Diluted	<u>\$ 3,531</u>	<u>\$ 3,549</u>

For the year ended September 28, 2019, the dilutive effect of options to purchase 208,000 shares of common stock at exercise prices ranging from \$20.18 per share to \$22.50 per share were not included in diluted earnings per share as their impact would have been anti-dilutive.

For the year ended September 29, 2018, no options were excluded from diluted earnings per share as all were dilutive.

14. RELATED PARTY TRANSACTIONS

Employee receivables totaled approximately \$414,000 and \$386,000 at September 28, 2019 and September 29, 2018, respectively. Such amounts consist of loans that are payable on demand and bear interest at the minimum statutory rate (1.85% at September 28, 2019 and 1.63% at September 29, 2018).

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 \$0 and \$303,000 for the years ended September 28, 2019 and September 29, 2018, respectively. The Company ceased utilizing the services of this firm upon hiring him as the Chief Financial Officer.

15. SUBSEQUENT EVENTS

On November 26, 2019, the Board of Directors declared a quarterly dividend of \$0.25 per share on the Company's common stock to be paid on January 7, 2020 to shareholders of record at the close of business on December 16, 2019.

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CORPORATE INFORMATION

BOARD OF DIRECTORS

Michael Weinstein

Chairman and Chief Executive Officer

Anthony J. Sirica

Chief Financial Officer and Treasurer

Vincent Pascal

Senior Vice President --- Senior Vice President and Chief Operating Officer

Paul Gordon

Senior Vice President --- Director of Las Vegas Operations

Marcia Allen

Chief Executive Officer, Allen & Associates

Bruce R. Lewin

Chairman and President, Continental Hosts, Ltd.

Steve Shulman

President, Managing Director, Hampton Group Inc.

Arthur Stainman

Senior Managing Director, First Manhattan Co.

Stephen Novick

Senior Advisor, Andrea and Charles Bronfman Philanthropies

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